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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,235	10/03/2003	Stephane F. Rouanet	03031	3544

7590 08/09/2006

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,235

Applicant(s)

ROUANET ET AL.

Examiner

Khoa D. Huynh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) 19-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 54 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/17/06</u> . | 6) ☐ Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-16, 54 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "wherein at least a portion of static electricity is discharged prior to or during step (d)" renders claim 1 indefinite because claim 1 does not provides for the step of producing static electricity prior to or during step (d). Since claim 1 does not set forth any steps involved in the method/process of producing static electricity, it is unclear what method/process applicant is intending to encompass. Claims 2-16 depend on claim 1 and are likewise indefinite.

Claims 54 and 55 suffer similar deficiency.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, and 4-11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rocchio et al. (US 2004/0003866 A1) in view of Nijima et al. (JP 08268534).

The Rocchio et al. reference discloses an apparatus for filling a particulate material or matter (115) from a supply container (105) into a vessel (125). As schematically shown in Figure 2c, the vessel includes a length, a width and an internal volume. As schematically shown in Figure 5A, the vessel is subject to a vibratory motion (Fig. 5A), via an actuator (225), as the internal volume of the vessel in being filled with the particulate material to the desire amount. It is inherent that the Rocchio et al. particulate matter includes electrostatically chargeable particles because it is a general knowledge in the powder filling art that particulate material or matter is normally charged with the static electricity generated by the vibration device.

The Rocchio et al. reference DIFFERS in that it does not specifically disclose that at least a portion of static electricity is discharged as claimed. Attention, however, is directed to the Nijima et al. reference which discloses a power supply device. The device includes a vibration device (2) to excite the power (7) inside the container (at 3). The Nijima et al. reference also discloses that the gutter part (4) is treated (e.g. humidified air) prior to filling to discharge or eliminate the static electricity generated by the vibration device (2). Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the Rocchio et al. device by injecting humidified air

into the powder, in view of the teaching of Nijima et al., in order to eliminate the static electricity generated by the vibration device. The Nijima et al. reference also discloses that particulate material or matter is often charged with the static electricity generated by the vibration device during filling. Therefore, it is inherent that the modified Rocchio et al. particulate matter includes electrostatically chargeable particles

Regarding claims 1 and 8-10, the method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claims 3 and 4, as schematically shown in Figure 5B or 5C, the vessel is further subject to a tamping motion, via a device (at 240 or 250), along the length of the vessel by impacting a portion of the vessel through a stationary surface (at 130). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 5, the modified Rocchio et al. reference DIFFERS in that it does not specifically indicate tamping motion subjects to at least one deceleration of at least about 900 m/s^2 as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such deceleration for the tamping motion since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 6, the Rocchio et al. reference also discloses that the vessel is simultaneously subjected to the tamping motion and the vibratory

motion (page 4, left column, lines 7-12). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 7, the Rocchio et al. reference also discloses that the vibratory motion is ceased before the vessel is subjected to the tamping motion (page 4, left column, lines 7-12). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 11, the modified Rocchio et al. reference DIFFERS in that it does not specifically indicate the relative humidity of about 80% or more as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such percentage of relative humidity for the humidified air since discovering an optimum value for humidified air of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Rocchio et al. (as discussed above) in view of Krush et al. (6250792).

The modified Rocchio et al. reference DIFFERS in that it does not specifically disclose that the vibratory motion is a sinusoidal motion as claimed. Attention, however, is directed to the Krush et al. reference which discloses a vibration device (10) used in powders filling/dispensing apparatus (col. 1, lines 12-25; col. 5, line 15) is known. The vibration device produces sinusoidal vibration or motion to transfer forces and impact impulses to the container wall to

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promote free flow of powder material. Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the modified Rocchio et al. device by employing a sinusoidal vibration or motion, in view of the teaching of Krush et al., in order to disturb the powder in the container to promote free flow of powder. The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Rocchio et al. (as discussed above) in view of Sato et al. (US 2004/0134560).

The modified Rocchio et al. reference DIFFERS in that it does not specifically disclose the use of a corona discharge to reduce the amount of static electricity as claimed. Attention, however, is directed to the Sato et al. reference which discloses a power supply device. The device includes a corona charging device (29) to ionize air for purpose of delivering ions to surfaces to be charged. Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the Rocchio et al. device by employing a corona charging device, in view of the teaching of Sato et al., in order to apply a uniform charge of positive polarity across the entire surface of the receptacle. The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

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7. Claims 14-16, 54 and 55, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Rocchio et al. (as discussed above).

The modified Rocchio et al. reference DIFFERS in that it does not used to fill powder comprising metal oxide aerogel particles as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Rocchio et al. device to fill powder containing metal oxide aerogel particles. Such modification would considered a mere choice of a preferred filling material on the basis of its suitability for the intended use especially since (a) the applicant also discloses that the method can be used to fill the receptacle with any suitable particulate matter (page 15, paragraph [0053]) and b) the Rocchio et al. reference further discloses that the apparatus could be used in other filling processes (page 2, paragraph [0026]).

Regarding claims 14-16, 54 and 55, the method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Response to Amendment

8. Applicant's amendment, filed on 07/17/06, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

9. Applicant's arguments filed on 07/17/06 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that the Rocchio et al. reference does not teach a method of filling...wherein at least a portion of static electricity is discharged prior to or during step (d). See the Remarks section, pages 14-15.

Nevertheless, such arguments are moot in view of the new grounds of rejection under 35 U.S.C. 103(a) as being unpatentable over Rocchio et al. (US 2004/0003866 A1) in view of Nijima et al. (JP 08268534) as discussed supra.

Applicant also presents arguments for the previously presented dependent claims and asserts that since the amended independent claim 1 is allowable, the dependent claims are also patentable. See remarks section, pages 16-25.

Nevertheless, since the amended claim 1 is not allowable, it is believed that the previously presented dependent claims are also not patentable over the prior art as discussed supra.

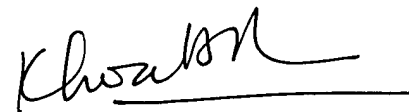
Also, applicant's arguments with respect to amended claim 1 and new claim 55 have been considered but are moot in view of the new grounds of rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoa D. Huynh
Primary Examiner
Art Unit 3751